

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE: PETITION OF MCI WORLDCOM, INC. EXECUTIVE SECRETARY
TO ENFORCE INTERCONNECTION) DOCKET NO. 99-00662
AGREEMENT WITH BELL SOUTH)
TELECOMMUNICATIONS, INC.)

**SUPPLEMENTAL REPLY OF MCI WORLDCOM IN SUPPORT OF
MOTION FOR SANCTIONS**

MCI WorldCom, Inc. ("WorldCom") submits this Supplemental Reply in response to the September 7, 2001 letter from BellSouth Telecommunications, Inc. ("BellSouth") to Tennessee Regulatory Authority ("TRA") Executive Secretary David Waddell in the above-captioned filing. In the letter, which was accompanied by an affidavit from BellSouth employee Richard McIntire, BellSouth acknowledges that the company wrongfully withheld payment to MCI metro of reciprocal compensation for ISP traffic. According to the affidavit, Mr. McIntire states that the withholding was "made in error." He states that BellSouth has now corrected the error by sending MCI metro \$52,660.86 in additional reciprocal compensation plus a late payment fee.

Based on the letter and affidavit, MCI WorldCom submits that:

1. The TRA should open a "show cause" proceeding for the purpose of determining the amount of the fines BellSouth must pay and any other appropriate sanctions which should be imposed for the admitted violation of the agency's orders; and
2. As part of that show cause proceeding, the TRA should also investigate whether BellSouth has, in fact, now complied with the TRA's orders or, as MCI WorldCom contends, is continuing to withhold reciprocal compensation payments in defiance of the agency's orders and

as part of a pattern of anti-competitive conduct intended to put financial pressure on competing carriers.

I. The TRA should open a show cause proceeding to determine appropriate sanctions against BellSouth just as the agency would do if any other regulated utility, especially one with a history of disregard for the Authority's orders, had been explicitly directed to take certain action and then failed to take such action.

In its Order of July 12, 2001, issued in this docket, the Authority described BellSouth's "pattern of disregard for the Authority's orders" regarding the payment of reciprocal compensation for ISP-bound traffic. The Authority wrote:

Regrettably, BellSouth has demonstrated a failure to make payments as directed in the Authority's Order reflecting such determinations, even in the absence of a stay from the Authority or from the federal district court. The Authority is concerned that with regard to the Initial Order in this matter, which is consistent with the Authority's prior decisions on the reciprocal compensation issue, BellSouth may continue its pattern of disregard for the Authority's Orders.

Then, in the clearest possible language, which was concurred in by all three TRA directors, BellSouth was told:

The Authority deems it necessary, therefore, to emphasize that the directives contained in the Initial Order in this matter must be complied with, including the directive to make payments due MCImetro "immediately."

Given that language, BellSouth's admitted failure to comply virtually requires that the agency impose sanctions against BellSouth just as the agency has done in other, similar cases involving repeated disregard of the TRA's instructions. *See, e.g., Show Cause Proceeding Against GASCO Distribution Company, Inc.*, Docket 97-00160. (In that docket, Gasco was fined and placed on probation for the repeated failure to file timely financial reports with the TRA, an offense which, unlike the BellSouth violation, did not directly harm customers or competitors.)

MCI WorldCom expects and assumes that the TRA will take the same strong, position concerning enforcement of the Authority's orders whether the offending utility is the state's largest regulated company or one of the state's smallest.

II. While the BellSouth letter and affidavit acknowledge that the company failed to comply with the TRA's orders, Mr. McIntire's affidavit and the amended billing statement attached thereto also demonstrate, MCI WorldCom submits, that BellSouth is continuing its pattern of illegal and anti-competitive conduct regarding payment of reciprocal compensation for ISP traffic.

As explained in the "Reply of MCI WorldCom in Support of Motion for Sanctions," filed September 6, 2001, BellSouth was invoiced in August, 2001, for a total of \$429,826.54 for reciprocal compensation and intraLATA access charges. As set forth in a billing statement from BellSouth dated August 15, 2001 (attached to the Reply of MCI WorldCom), BellSouth paid only a tiny fraction (\$6,276.56) of the total amount due and stated that the company was withholding the balance because of "ISP usage withheld/incorrect intraLATA and local rates invoiced." On Friday, Sept. 7, 2001, Mr. McIntire submitted a revised billing statement which is attached to his affidavit. According to the revised statement, BellSouth has now made a small additional payment of \$52,660.86 but continues to withhold about 85% of the total amount due. In contrast to the earlier statement, the reasons for the withholding are now listed as "Incorrect local rate/incorrect PLU applied."

Neither the revised billing statement nor Mr. McIntire's affidavit explain what is meant by "incorrect local rate" nor does he state what is the "correct" rate that BellSouth has apparently used to re-calculate the bill from MCI metro. As MCI WorldCom has previously pointed out, the TRA has already ruled that the correct local rate for terminating local traffic under the current agreement between MCI metro and BellSouth is \$.004 per minute. There

should be no dispute on that issue. Similarly, Mr. McIntire fails to explain why the issue styled “incorrect intraLATA . . . rate,” which was listed on the original statement, is no longer listed on the revised statement or, conversely, why “incorrect PLU,” which was *not* mentioned in BellSouth’s original statement, apparently became an issue only *after* MCI WorldCom filed the Motion for Sanctions.

This one incident typifies BellSouth’s pattern of conduct regarding reciprocal compensation payments. As set forth in the first affidavit of Dan Aronson, director of carrier billing services for MCI WorldCom (attached to the Motion for Sanctions), BellSouth offers vague and changing reasons for its failure to pay, refuses to provide information regarding those reasons,¹ and stands apart from other ILECs in its unwillingness to resolve billing disputes. Aronson affidavit, at 5. The company simply makes insufficient payments “in accordance with directives issued by management.” *Id.*

Now, the TRA itself can understand the frustration of MCI WorldCom and other carriers regarding BellSouth’s conduct.² Despite the TRA’s repeated rulings in various dockets, BellSouth continues to withhold payment for ISP-bound traffic until the TRA has litigated each and every interconnection agreement. Once the TRA has ruled, BellSouth either continues withholding payments “in error” or offers vague and shifting reasons (or no reasons at all, see


¹ Mr. McIntire states in his affidavit that he was unaware of the billing error in the August statement until the matter was brought to his attention by a BellSouth attorney on Sept. 7, 2001. MCI WorldCom is prepared to present testimony, if needed, that Mr. Aronson left a telephone message for Mr. McIntire immediately after receiving the August billing statement and that Mr. McIntire, as he typically does, failed to return Mr. Aronson’s call. If he had returned the call, he would have learned of the errors on the statement.

² BellSouth’s conduct in this case follows a pattern familiar to other CLECs. In the reciprocal compensation complaint recently filed by US LEC (TRA docket 01-00726), US LEC states, at page 2, “What makes BellSouth’s position in this case particularly troubling is that it is clear from BellSouth’s own records that less than half the traffic BellSouth sends to US LEC is terminated to ISPs, yet BellSouth withholds as much as eighty to ninety (80-90%) of invoiced amounts without any explanation for its action.”

footnote 2, *supra*) to justify withholding as much as 85% of the amounts owed. MCI WorldCom submits that the company's conduct has but one explanation: it is part of a pattern of anti-competitive conduct executed "in accordance with directives issued by management" and designed to put financial pressure on competing carriers in order to force them settle for less than the full amounts owed.

Respectfully submitted,

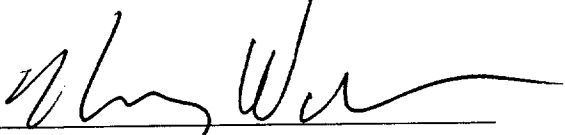
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 10th day of September, 2001.

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Henry Walker